

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

99 JAN 29 PM 3: 21

U.S. DISTRICT COURT  
N.D. OF ALABAMA  
ENTERED

JAN 29 1999

FRANK P. MARTIN,

Plaintiff,

VS

KELLI LOVOY, et al,

Defendants.

CIVIL ACTION NO. 98-RRA-2724-W

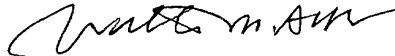
MEMORANDUM OPINION

The plaintiff's *in forma pauperis* motion is due to be granted. Because plaintiff has sought and is being allowed to proceed under 28 U.S.C § 1915(d), his claims are subject to examination for frivolousness or maliciousness. A claim is frivolous if it either rests on an indisputably meritless legal theory, *see Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989), or it alleges facts that are fantastic or delusional. *See Denton v. Hernandez*, 504 U.S. \_\_\_, 112 S.Ct. \_\_\_, 118 L.Ed.2d 340 (1992). A claim barred by an affirmative defense appearing plainly on the face of the complaint is frivolous because it rests on an indisputably meritless legal theory. *See Clark v. State of Georgia Pardons and Paroles Board*, 915 F.2d 636 (11th Cir., 1990).

The magistrate judge attempted to elicit information from the plaintiff in order to determine if the plaintiff could state a federal cause of action. The magistrate has concluded that the plaintiff cannot. The court has considered the entire file in this action, together with the Magistrate Judge's Report and Recommendation, and has reached an independent conclusion that the plaintiff has not stated a cause of action.

The court hereby adopts and approves those findings of the magistrate judge. An appropriate order will be entered dismissing this action.

DONE this 29<sup>th</sup> day of January, 1999.



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William M. Acker, Jr.,  
United States District Judge